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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,271	09/07/2004	Janice D. Ebel	BUR920040129US1	5270

45093 7590 12/24/2009

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EXAMINER	
HAYLES, ASHFORD S	

ART UNIT	PAPER NUMBER
3687	

NOTIFICATION DATE	DELIVERY MODE
12/24/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

btviplaw@us.ibm.com
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Office Action Summary	Application No.	Applicant(s)	
	10/711,271	EBEL ET AL.	
	Examiner	Art Unit	
	ASHFORD HAYLES	3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *07 September 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 30, 2009 has been entered.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Examiner contends that a process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Neither of these requirements are met by the claims, therefore the claims does not qualify as a statutory process and do not positively recite the subject matter that is being transformed, by identifying the material that is being changed to a different state.

Claim 1 recites only a nominal recitation of a computer. Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process

under section 101. The only recitation of structure is in the nominal recitation in the preamble citing a "computer".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurihara et al. (PG PUB. 2003/0171963).

As per Claim 1, 12 and 16, Kurihara et al. does not expressly disclose an excess inventory with and without a manufacturing limitation. However, Kurihara et al. does disclose a method, system and computer program product of managing inventory, the method comprising the steps of:

selecting an analysis duration (Figure 3, Step S2) and at least one analysis point within the analysis duration (Figure 3, Step S3);

determining an excess inventory (pg.3, ¶ [0028] determination of predicted product inventory amounts, or comparison of desired product amounts and the amount (predicted product inventory amount-product inventory target values), may be performed at any time, the amount (predicted product inventory amount-product inventory target values) may be handled as an excess inventory),with manufacturing

limitation (Figure 3, Step S7) and an excess inventory without manufacturing limitation for each analysis point (Figure 3, Step S8);

determining a trapped inventory based on a difference between the excess inventory with manufacturing limitation and the excess inventory without manufacturing limitation (pgs.13-14, ¶ [0184-0191] discusses a predicted product inventory amount – product inventory target value, where production of product type C, and during the period of periodic inspections, production of product type C will not be possible; hence there is a need to stockpile the anticipated demand amount during this period as product inventory, and so from the current step, "warehousing of 15 tons of product type C by such-and-such date is desired" (4) is input, and thus determining the amount of inventory delayed during the production of product type C); and

determining an impact of a policy inventory on an inventory consumption (Figure 4, Step S15).

As per Claim 2, 13 and 17, Kurihara et al. discloses a method, system and computer program product further comprising determining an optimum inventory for each analysis point (Paragraph [0084], lines 25-28 discuss the product inventory target value setting computes product inventory target values for the production plan periods).

As per Claim 3 Kurihara et al. discloses a method, further comprises selecting a cycle time after each analysis point (Paragraph [0065], lines 36-40 discuss the results of computations, where 30 days was set as the long production plan period, and 5 days as each of the short production plan periods. Hence the short production plan periods are the result of six equal divisions of the long production plan period).

As per Claim 4, Kurihara et al. discloses a method, wherein the cycle time is selected based on a time period required for manufacturing an inventory (Figure 3, Step S1).

As per Claim 5, Kurihara et al. discloses a method, wherein the optimum inventory is a demand occurring within the cycle time (Table 3 depicts inventory needed for a particular product type with a corresponding time period).

As per Claim 6, 14 and 18, Kurihara et al. discloses a method, system and computer program product further comprising determining a total optimum inventory based on the optimum inventory at each analysis point (Paragraph [0072], lines 35-39 discuss the desired product information storage means 200 performs integration of the amount and time of delivery of products whose acquisition is desired input in processing step S1, based on the production plan periods previously written to the production plan period database 311 in processing step S4).

As per Claim 7, 15 and 19, Kurihara et al. discloses a method, system and computer program product further comprising determining an inventory that will be consumed in a short term, an inventory that will be consumed in a mid term, an

inventory that will be consumed in a long term and an inventory that will not be consumed in a period of time, wherein the short term, mid term and long term are within the analysis duration (Paragraph [0199], lines 1-6 discuss files stored in the product production regulation information storage means are read, and information which must be taken into consideration when creating a production plan is read, including information related to raw materials used for the production of products, such as for example the constitution of raw materials used, consumption units, product inventory amounts, the period required from order to arrival).

As per Claim 8 and 20, Kurihara et al. discloses a method, and computer program product further comprising deciding an inventory size based on the excess inventory, the trapped inventory and the impact of the policy inventory (Paragraph [0169], lines 11-20, discuss product production instruction information storage means 600 computes, the amount which must be produced within the production plan period, the difference between the product amount acquisition of which is desired within the production plan period, and the predicted product inventory amount at the time of the desired time of delivery less the product inventory target value to accommodate demand fluctuations which may occur within the production plan period, and stores this together with the desired time of delivery).

As per Claim 9, Kurihara et al. discloses a method, further comprising determining an excess inventory with the policy inventory and an excess inventory without the policy inventory (Paragraph [0176], lines 16-22, discuss a functional device first checks whether product production instruction amounts and times of delivery are legitimate. That is, checks are performed to determine whether production instruction amounts to satisfy desired times of delivery within the production plan period do not exceed production capacities, and if production capacities are exceeded, whether this can be accommodated by delaying times of delivery, to correct production instruction amounts and times of delivery for the product in question).

As per Claim 10, Kurihara et al. discloses a method, wherein the policy inventory impact determining is based on a difference between the excess inventory with the policy inventory and the excess inventory without the policy inventory (Paragraph [0170], lines 22-29 discuss When the amount obtained by subtracting the product inventory target value to accommodate demand fluctuations which may occur within the production plan period from the predicted product inventory amount at the desired time of delivery is greater than the product amount acquisition of which is desired at the desired time of delivery, the production instruction amount for the product acquisition of which is desired is treated as zero).

As per Claim 11, Kurihara et al. discloses a method, wherein the excess inventory can be a negative number (Paragraph [0170], lines 29-35 discuss when the predicted product inventory amount within the production plan period is less than the product inventory target value to accommodate demand fluctuations which may occur within the production plan period, the deficient amount is computed as a production instruction amount up to the time of the deficiency, where a deficiency can be a negative number).

Response to Arguments

5. Applicant's arguments filed September 30, 2009 have been fully considered but they are not persuasive.

Applicant argues: *"Never does Kurihara disclose determining excess inventory with a manufacturing limitation and without a manufacturing limitation. In fact, manufacturing limitation is never mentioned in Kurihara".*

Examiner respectfully disagrees. The claim is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurihara et al. Although the invention is not identically disclosed or described as set forth in 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

Applicant argues: *"Probable demand is not "determining a trapped inventory based on a difference between the excess inventory with the manufacturing limitation and the excess inventory without the manufacturing limitation." Thus, the Office has not shown every element of Applicants' claimed invention in Kurihara".*

Examiner disagrees. Applicant defines trapped inventory as: *an amount of inventory that is delayed in manufacturing due to certain manufacturing limitations, yet required to fulfill customer requirements.* Kuirhara teaches that during periodic inspections product C will be delayed and an amount must be stockpiled to meet customer requirements, thus meeting the claimed limitation of trapped inventory.

Applicant argues: "*The Examiner appears to assert that demand fluctuations are the same as manufacturing limitations. Such an assertion ignores the definition of manufacturing limitation and demand fluctuation. A manufacturing limitation is defined as any limitation that delays the manufacturing of an inventory, e.g., governmental restraint and manufacturing capacity (page 7, lines 11-12)*".

Examiner respectfully disagrees. As defined within the applicant submitted specifications a manufacturing limitations is ***any*** limitation that delays the manufacturing of an inventory, e.g., governmental restraint and manufacturing capacity. Use of the Latin expression "e.g." translates to *exempli gratia*, or "for the sake of an example," and is commonly used when an individual is not intending to list everything that is being discussed, not to concretely define a term. Furthermore, the Applicant has intentionally widened the definition of manufacturing limitations by using

the term ***any***, which allows the Examiner to construe any limitation that may delay manufacturing an inventory outside of just a governmental restraint and manufacturing capacity. Therefore, as cited Kurihara teaches the limitation of delaying the manufacturing of an inventory.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cargille et al. (PG PUB. 2003/0050817) discloses a capacity driven production planning.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ASHFORD HAYLES whose telephone number is (571)270-5106. The examiner can normally be reached on Monday - Friday 8:00 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew S Gart/
Supervisory Patent Examiner, Art Unit 3687

/A. H./
Examiner, Art Unit 3687